IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE THIRD DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HONOURABLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.8923 of 2003

Between:

Mohammad Ishaq s/o. Mohammad Chand
R/o. H.No.16-7-797/1, Moosanagar, Chaderghat,
Hyderabad.

...PETITIONER

AND

1. Municipal Corporation of Hyderabad, Tankbund Road, Hyderabad, Rep.by its Commissioner.
2. The Station House Officer, Chaderghat P.S., Hyderabad.
3. Mohammad Moin, R/o.Moosanagar, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, Direction or order, more particularly one in the nature of Writ of Mandamus declaring the action of the respondents threatening to demolish the construction being made by the petitioner in survey Nos.214 and 222 of New Bridge, Moosanagar, Chaderghat, Hyderabad without due process of law as illegal, violative of Article 21 of the Constitution of India and contrary to Section 452 of the Hyderabad Municipal Corporation Act, 1955 and without jurisdiction and further direct the respondents not to interfere with the petitioner's construction in the land in survey Nos.214 and 222 of New Bridge, Moosanagar, Chaderghat, Hyderabad.

Counsel for the Petitioner: MRS.A.JAYANTHI

Counsel for the Respondents: MR.RAMA RAO GANTA

The Court made the following:

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ORDER:

The petitioner claims to be the owner of land admeasuring 70 square yards in Survey Nos.214 and 222, which he allegedly purchased under agreement of sale, dated 23.03.2002 from one Mohammad Jaffer. It is the case of the petitioner that as no permission is required for construction of a house if the plot area is less than 200 square meters as per G.O.Ms.No.423, dated 31.07.1998, the petitioner started construction in the second week of April 2003. Be it noted, that the petitioner, in respect of another plot in the same Survey Nos.214 and 222, filed Writ Petition being W.P.No.1089 of 2001 seeking declaration of the action of the first respondent in entering and causing damage to the petitioner's property without due process of law as illegal and violative of Article 300-A of the Constitution of India and a consequential direction to the respondents not to interfere with the petitioner's possession and enjoyment of the premises. By order dated 16.04.2001, this Court directed the Corporation not to interfere with the petitioner's possession and also observed that the order passed by the Court shall have no bearing upon the proposals already initiated to acquire the land. When the officials of the first respondent-Corporation allegedly visited the place on 30.04.2003 and 02.05.2003, apprehending that the structure might be demolished, the present Writ Petition is filed seeking declaration of the action of the respondents in threatening to demolish the construction made by him and a consequential direction to the respondents not to interfere with the petitioner's construction in the land.

The petitioner alleges that the second respondent is trying to demolish the house without issuing notice under Section 452 of the Hyderabad Municipal Corporation Act, 1955 ('the Act' for brevity) on the ground that permission is required from the Corporation in spite of the orders of this Court in W.P.No.1089 of 2001.

This Court while admitting the Writ Petition on 06.05.2003 passed interim directions in W.P.M.P.No.11460 of 2003 ordering interim stay of demolition except in accordance with due process of law. The W.P.M.P. is again listed today.

The learned standing counsel for the Municipal Corporation submits that the petitioner has not filed the copy of the building plan proposed to be constructed in the land which is less than 200 square meters. Learned counsel for the petitioner is not able to place before this Court any such plan, which is filed by the petitioner before the Municipal authorities. Be that as it is, the learned standing counsel does not dispute the legal position that unless and until the petitioner is given notice under Section 452 of the Act, no action can be taken against the petitioner.

The Writ Petition is, therefore, disposed of directing *status quo* as on today and giving liberty to the Corporation to proceed against the petitioner in accordance with

law and in accordance of the provisions of the Act.

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(V.V.S.RAO, J)

3rd September 2004

RRB

ASSISTANT REGISTRAR

//True Copy//

SECTION OFFICER

Copy To:

1. The Commissioner, Municipal Corporation of Hyderabad, Tankbund Road, Hyderabad.
2. The Station House Officer, Chaderghat P.S., Hyderabad.
3. Two CD copies.